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Essex ss. Land Court June 7, 2018
A true copy of Land Court Document 118073
Certificate 17980 Book — Page —
Registered 6/7/18 at 10 H 07 M A M
Attest: M. Paul Lannuccillo
Register of Deeds

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Essex North Registry

DECISION OF THE ANDOVER PLANNING BOARD
AS A SPECIAL PERMIT GRANTING AUTHORITY

ON THE APPLICATION OF
TWIN BIRCH DEVELOPMENT LLC
MONARCH WOODS

For a Special Permit for Earth Movement under Section 6.3 of the Zoning By-Law.

Decision: SP16-03

YES (with conditions)

A public meeting of the Planning Board was held on December 13, 2016, in the Third floor conference Room of the Town Office Building. Present and voting in the affirmative on the matter were members Joan Duff, Vincent Chiozzi, Austin Simko, Ann Knowles, Zachary Bergeron and Rocky Leavitt.

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on September 8 and September 15, 2016, and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws, Chapter 40A, a public hearing was convened on September 27, 2016 on the application by Twin Birch Development for a Special Permit for Cluster Development associated with a Definitive Subdivision and Special Permit for Earth Movement of a residential subdivision. The hearing was continued and closed on November 9, 2016, with the aforementioned members of the Board present with a certification pursuant to G.L. c. 39 Section 23D received.

RECEIVED
TOWN ENGINEERING OFFICE
DEC 14 P 1:54
TOWN OF ANDOVER, MASS.

Premises affected is property owned by Twin Birch Development LLC and Anne Mattison and Dana C Scholtz located at 106, 110 and 112 Ballardvale Road and shown on Assessors Map 119 Lots 293, 294 and 295, comprising of 10.32-acres, hereinafter referred to as the "site", on which the subdivision plan entitled "Monarch Woods " would take place. See Exhibit A attached.

Findings of Section 9.4 Special Permits:

Social, economic, or community needs which are served by the proposal.

The proposal will provide a social and community need by creating open space accessible to the public.

Traffic flow and safety, including parking and loading.

The proposal provides for traffic flow with the roadway meeting the regulation for the turning movements and safety with the proper sight distances and the addition of a crosswalk from Monarch Lane to Ballardvale Road.

Adequacy of utilities and public services.

The proposal provides for water, sewer, electrical, cable, hydrants and stormwater which has all been reviewed and approved by the appropriate departments.

Neighborhood Character and social structure.

The neighborhood consists of the abutting street of Anderson Circle, a three lot subdivision ranging from 30,000 sf to an acre plus lots. Across the street is Tilton Lane, an 18 lot subdivision with connected open space. Also within the neighborhood there is the 38 lot cluster subdivision with open space known as Teaberry Lane, Bayberry Lane and Blackberry Lane, the lots have an area of 20,000 or 30,000 sf. Monarch Lane will be in keeping with the character of the neighborhood and social structure of the existing neighborhood.

Impacts on the natural environment, including but not limited to, air and water pollution, noise, stormwater runoff, aesthetics.

The proposal's impacts will be not be unreasonably detrimental due to the creation of a cul-de-sac that will allow for less impervious area to be created and improve the aesthetics of the street. The stormwater runoff has been peer reviewed and meets the standards set forth by the Massachusetts Department of Environmental Protection Stormwater Management Standards, the Town's Subdivision Regulations, Andover Stormwater Management & Erosion Control Bylaw and Regulations, and the Town of Andover Wetlands Protection Bylaw. The creation of a cluster subdivision creates open space that will be accessible by the public and provides for protection of the wetland and its buffer zones.

Findings of Section 7.1 Cluster Development

The arrangement of lots, streets and buildings as they may promote the harmonious integration of the proposed development with existing surrounding properties;

The applicant's proposed lot sizes of 0.68 acres is consistent with lot areas in the surrounding neighborhood.

The proposed development would be on a newly constructed private way ending in a cul-de-sac. There will be no change to the existing residential nature of the neighborhood.

Originality in the overall layout and design to achieve the best possible relationship between the proposed development and the land;

A conventional development of this site would result in more site disturbance than the proposed cluster development.

A conventional development of this site would result in no open space, the three acres of open space will help provide a natural buffer between the proposed subdivision and Cullen Circle and protect the wetlands and its buffer zones.

Usability of open spaces for active or passive recreation, determined by size, shape, topography and location;

The topography of the open space allows it to be usable as passive recreation. A pedestrian easement over the drainage lot will be granted to allow access to the open space area.

Inclusion within open spaces of irreplaceable natural features such as streams, mature trees or clusters of trees, rock outcrops, eskers, bluffs, slopes and historic or archaeological features;

There are wetlands, mature trees and other vegetation that will be preserved and largely undisturbed.

Accessibility of open spaces to the disabled, elderly and children;

Accessibility is being provided for from an easement over the drainage lot. Access by the disabled, elderly and children is available over the lot.

Suitability of open spaces for scenic values and improvement or preservation of views.

The open space will have scenic value and preservation of views on the westerly side of the subdivision.

Findings of Section 6.3 Earth Movement

The subdivision as a whole makes the best feasible design of existing topography

The existing grade at the easterly property line at 3 Anderson Circle is 120 and will remain at 120, and the elevation changes from 120 to 118 about 30 feet in from the property line; stays at 118 for 100 feet. There are no extreme grade changes within the proposed development. The grading of the subdivision property is consistent with other developments in Town.

The applicant has provided 30% of open space as required within a cluster subdivision as opposed to no open space with a definitive subdivision. The open space will provide protection to the wetlands located along the westerly side of the property and will be donated to the Town's Conservation Commission for use by the public.

The applicant has provided a plan showing the limit of clearing which leaves a 20 foot area on Lots 2, 3 and 4 that will not be cleared by the developer. There is already a cleared area shown on Lot 2 and 3 and Lot 1 has already been cleared because of the home and pool which will be demolished.

Based on this information and the review of the subdivision as a whole, the cluster subdivision makes the best feasible design of the existing topography. The applicant has submitted the quantity and composition of materials to be regraded, the estimated number of truck loads, the purpose for which the materials are to be moved and the location in which the earth movement will be conducted. The Board has considered the magnitude of the change in topography, the extent of cuts and fills, the amounts of earth materials involved, the removal of existing vegetation, the preservation of features and the type and size of the plan. Although the development is being constructed in an established neighborhood, any adverse effects to those abutters can be mitigated through the regulating of hours of construction operation.

It has been the past practice of the Planning Board to regulate the hours and days of the earth movement activities. In this instance, staff recommends the Planning Board condition their approval by restricting earth movement activities to the time period between the last morning pick-up of school children, and the first afternoon drop off.

The Board finds that the proposed use will not be unreasonably detrimental or substantially detrimental to the established or future character of the neighborhood or the town, and further that there are adequate public roadways and municipal utilities. In considering a special permit the Board has imposed conditions.

The Board finds that the cluster subdivision as a whole makes the best feasible design of existing topography and complies with the requirements of Section 6.3, the findings of Section 7.1.5, Section 9.4 of the Andover Zoning Bylaw, is in conformance with the Subdivision Control Law, the Rules and Regulations Governing the Subdivision of Land in the Town of Andover, and the recommendations of the Board of Health.

In consideration of all the reviews, presentations, discussions and testimony at the hearings, the Board grants approval of the Special Permit for Earth Movement as associated with the Definitive Subdivision and Special Permit for Cluster Development entitled "Monarch Woods" to be known as Monarch Lane subject to the following conditions:

General Conditions

1. For purposes of this approval the subdivision shall be defined as all features depicted on the plans described under condition number 2; the developer shall be defined as the applicant, Twin Birch Development and its assigns or successors in title to the development, and all contractors and subcontractors under control of or in service to the

developer;

2. The construction and grading of the subdivision and all activities associated therewith shall be in conformance and compliance with the information, details, notations, grading and features shown on the following plans, drawings and documents prepared by Marchionda & Associates, L.P.;
 - a. Sheet 1 of 15, Cover Sheet, dated August 30, 2016, revised through November 4, 2016;
 - b. Sheet 2 of 15, Legend and Notes, dated August 30, 2016, revised through November 4, 2016;
 - c. Sheet 3 of 15, Existing Conditions Plan, dated August 30, 2016, revised through November 4, 2016;
 - d. Sheet 4 of 15, Plan of Land, dated August 30, 2016, revised through November 4, 2016;
 - e. Sheet 5 of 15, Grading & Drainage Plan, dated August 30, 2016, revised through November 4, 2016;
 - f. Sheet 6 of 15, Utility, dated August 30, 2016, revised through November 4, 2016;
 - g. Sheet 7 of 15, Plan & Profile, dated August 30, 2016, revised through November 4, 2016;
 - h. Sheet 8 of 15, Erosion and Sediment Control, dated August 30, 2016, revised through November 4, 2016;
 - i. Sheet 9 of 15, Construction Details, dated August 30, 2016, revised through November 4, 2016;
 - j. Sheet 10 of 15, Construction Details, dated August 30, 2016, revised through November 4, 2016;
 - k. Sheet 11 of 15, Construction Details, dated August 30, 2016, revised through November 4, 2016;
 - l. Sheet 12 of 15, Construction Details, dated August 30, 2016, revised through November 4, 2016;
 - m. Sheet 13 of 15, Construction Details, dated August 30, 2016, revised through November 4, 2016;
 - n. Sheet 14 of 15, Construction Details, dated August 30, 2016, revised through November 4, 2016;
 - o. Sheet 15 of 15, Construction Details, dated August 30, 2016, revised through November 4, 2016;
3. An instrument containing these conditions, shall be recorded at the Northern Essex Registry of Deeds;
4. Import or export of earth materials from within the subdivision is prohibited except as may be provided for under this special permit issued under Planning Board Decision SP16-03, or as otherwise allowed under the applicable provisions of the Zoning Bylaw;
5. Construction traffic associated with this subdivision shall be regulated by the Inspector of Buildings. Prior to commencing hauling operations, a hauling route shall have been

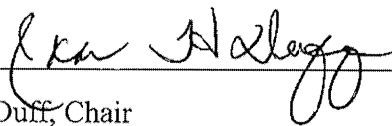
reviewed and approved by the Inspector of Buildings. Any deviation from the approved route and/or scheduling once established shall require proper notification and approval from the Inspector of Buildings. Construction traffic shall be defined as large trucks hauling earth moving equipment, dump trucks, trucks hauling building materials, cement trucks, and contractors' vehicles larger than panel trucks. It shall be the developer's responsibility to inform all contractors, subcontractors, vendors, and workmen of this restriction, which shall be enforced under the provisions of Section V.H. of the Board's Rules and Regulations;

6. Prior to any construction activity of any kind within the subdivision the developer shall submit for review and approval to the Planning Department a detailed schedule of the anticipated earth operations;
7. All construction activities within the subdivision shall be confined between the hours of 7:00 a.m., and 6:00 p.m., Monday through Friday, unless otherwise approved by the Planning Board. Once fully framed, interior construction related activities are allowed on Saturdays between 8:00 a.m. and 6:00 p.m. unless otherwise restricted or prohibited by the Inspector of Buildings in response to complaints. Construction activities include the transport of equipment, materials and supplies to and from the subdivision;
8. Hauling of earth materials and heavy equipment during morning pick up and drop off of school buses is not allowed. It shall be the developer's responsibility to communicate with the proper school departments to determine precise hours of pick up and drop off, and to inform all contractors, subcontractors, vendors, and workmen of this restriction, which shall be enforced under the provisions of Section V.H. of the Board's Rules and Regulations;

Following the statutory twenty-day appeal period, and in the absence of any appeal, the plan and an instrument containing the foregoing restrictions will be filed in the Registry of Deeds. The applicant is responsible for the costs associated with the Registry filings.

On December 13, 2016, at a regularly scheduled public meeting, the Andover Planning Board voted (6-0) to issue the foregoing Special Permit for Earth Movement.

Date: 12/14/16


Joan Duff, Chair

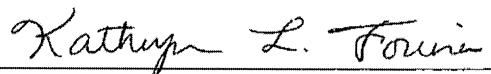
Essex, ss

COMMONWEALTH OF MASSACHUSETTS

Date: 12/14/16

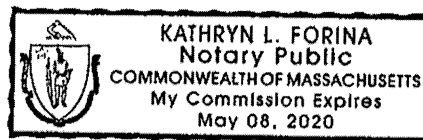
On this 14th day of December, 2016, by Joan Duff, the authorized agent of the Andover Planning Board, proved to me through satisfactory evidence, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the documents are truthful and accurate to the best of her knowledge and belief and who acknowledged to me that she signed it voluntarily for its stated purpose and acknowledged the foregoing to be the free act and deed of the Andover Planning Board.

Before me,



Kathryn L. Forina, Notary Public

My commission Expires May8, 2020



REGISTERED

LAND COURT, BOSTON. The Land
herein described will be shown on
our approved plan to follow as
REFERRED TO
MAY 31 2018
10362-M LOTS 125 THRU 129
10362-N LOTS 130 THRU 140
Plan (EXAMINED AS DESCRIPTION ONLY)
STL CHIEF SURVEYOR (JAN)

EXHIBIT A
LEGAL DESCRIPTION
REGISTERED LAND

All those certain parcels of land with the buildings thereon being the land located at and previously known as 106, 110 and 112 Ballardvale Road, Andover, Essex County, Massachusetts, being more particularly depicted as follows:

Parcel 1:

Lots 125 through 129 inclusive as shown on plan of land entitled, "Plan of Land in Andover, Mass" Sheet 1 of 1, Scale: 1"=40', Date: May 14, 2018, being a division plan of land of Lot 122 as shown on LC 10362K and Lot 124 as shown on LC 10362L creating Lots 125 through 140, Record Owners Twin Birch Development, LLC, Former Parcels C1 & C2/Former Parcel 122 and Dana C. Scholtz & Anne Mattison, Former Lots A & 120/Former Parcel 124, prepared by Marchionda and Associates, L.P., which plan is filed as Land Court Plan No. 10362M ("Plan 10362M").

Parcel 2:

Lots 130 through 140 inclusive as shown on plan of land entitled, "Plan of Land in Andover, Mass" Sheet 1 of 1, Scale: 1"=40', Date: May 14, 2018, being a division plan of land of Lot 122 as shown on LC 10362K and Lot 124 as shown on LC 10362L creating Lots 125 through 140, record owners Twin Birch Development, LLC, Former Parcels C1 & C2/Former Parcel 122 and Dana C. Scholtz & Anne Mattison, Former Lots A & 120/Former Parcel 124, prepared by Marchionda and Associates, L.P., which plan is filed as Land Court Plan No. 10362N ("Plan 10352N").

RECORDED LAND

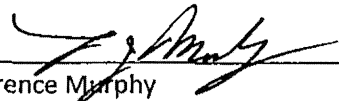
Those certain parcels of land shown as the recorded portions of Lot 6, Lot 7, Lot 8, and the Open Space, all as shown on plan of land entitled, "Plan of Land Monarch Woods in Andover, Mass." Date: August 30, 2016, revised through 8/31/17, Scale: 1"=40' and which plan is recorded with the Essex North District Registry of Deeds as Plan Number 17784 ("Subdivision Plan").

The foregoing premises are a portion of same premises described in deed from David Kindred to Twin Birch Development, LLC filed and recorded herewith and prior hereto.

CERTIFICATE OF TOWN CLERK

I, Lawrence Murphy, Town Clerk of the Town of Andover, Essex County, Massachusetts, do hereby certify that: i) the Decision of the Andover Planning Board on Application of Twin Birch Development, LLC for Approval of a Cluster Definitive Subdivision originally was filed in the Town Clerk's office on December 14, 2016; ii) within twenty (20) days thereafter, an appeal was filed by Yichuan Li and Shanshan Wang, Plaintiffs, against the Andover Planning Board *et al.*, Defendants in the Land Court Department of the Trial Court (Docket No. 16 MISC 000765); iii) on February 14, 2018, said appeal in the Land Court was dismissed upon a Stipulation of Dismissal; iv) a certified copy of the dismissal of the Land Court appeal has been filed with this office; and v) no other appeal of the above-referenced Decision of the Andover Planning Board was filed within twenty (20) days from the date the Decision was filed in this office.

Executed this 22nd day of FEBRUARY, 2018.



Lawrence Murphy
Town Clerk for the Town of Andover